

[relates to Docket Items 39 and 42]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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HECTOR L HUERTAS,

Plaintiff,

v.

TRANSUNION, LLC, et al.,

Defendants.

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HON. JEROME B. SIMANDLE

Civil No. 08-2009 (JBS)

**MEMORANDUM OPINION**

**SIMANDLE**, District Judge:

This matter is before the Court upon Plaintiff's "Appeal to District Court Judge of Magistrate's Order Denying Plaintiff's Motion for Judgment on the Pleadings" [Docket Item 39] and Plaintiff's appeal of the Magistrate Judge's November 6, 2008 Order denying Plaintiff sanctions against Defendant Experian, Inc. [Docket Item 42]. THIS COURT FINDS AS FOLLOWS:

1. Plaintiff has brought suit against Defendants Transunion LLC, Experian Inc., Dr. Ronald Brody, NRA Group LLC, and Citigroup Inc., for alleged violations of the Fair Credit Reporting Act, along with claims of fraud, medical malpractice, libel and slander.

2. On July 9, 2008, Plaintiff filed a motion for partial judgment on the pleadings against Defendant Experian, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure [Docket Items 11 and 12]. On November 5, 2008, this Court issued an order

denying Plaintiff's motion, finding that Defendant Experian had denied the allegations in Plaintiff's Complaint and consequently there are material issues of genuine fact [Docket Item 36]. On November 21, 2008, Plaintiff submitted what he calls an "Appeal to District Court Judge of Magistrate's Order Denying Plaintiff's Motion for Judgment on the Pleadings." The Magistrate Judge, however, did not deny Plaintiff's motion for judgment on the pleadings -- that decision came from this Court. If Plaintiff wishes to appeal that decision, he must wait until there is a final judgment in this action and bring his appeal before the Third Circuit. 28 U.S.C. § 1291; see Atkinson v. Taylor, 316 F.3d 257, 269 n.11 (3d Cir. 2003) (finding that District Court's determination that record raised genuine issue of material fact was not final, appealable decision).

3. Even construing Plaintiff's motion liberally as a motion to reconsider the Court's initial decision to deny judgment on the pleadings pursuant to Local Rule 7.1(i), his motion cannot succeed. To prevail on a motion for reconsideration, the movant must show either

- (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court . . . [rendered the judgment in question]; or
- (3) the need to correct a clear error of law or fact or to prevent manifest injustice.

Max's Seafood Café ex rel. Lou-Ann, Inc., v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). Plaintiff has not shown any of the

necessary prerequisites to justify reconsideration. Though Plaintiff submits an additional document, that evidence was previously available, but more significantly, the Court cannot look beyond the pleadings in a motion under Rule 12(c).<sup>1</sup> See Sands v. McCormick, 502 F.3d 263, 268 (3d Cir. 2007) (court does not look beyond pleadings on Rule 12(b)(6) motion); Turbe v. Gov't of the V.I., 938 F.2d 427, 428 (3d Cir. 1991) (court applies Rule 12(b)(6) standard to Rule 12(c) motions). Therefore, the Court will deny Plaintiff's appeal of this Court's November 5, 2008 Order.

4. Plaintiff also appeals the Magistrate Judge's November 6, 2008 Order denying Plaintiff's motion for sanctions against Defendant Experian. The Court can only modify a Magistrate Judge's Order where it is "clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a); L. Civ. R. 72.1(c). The Magistrate Judge has broad discretion to deny a request for sanctions. See Silver v. American Inst. of Certified Public Accountants, 212 F. App'x 82, 86-87 (3d Cir. 2006). The Court finds, after reviewing the record, that the Magistrate Judge's decision is neither

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<sup>1</sup> Furthermore, the Experian record that Plaintiff submits does not establish that Defendant Experian kept Plaintiff's delinquent information past seven and a half years. Among other things, it is not clear to this Court when Experian received the information included in the attached report. As the Court explained when denying Plaintiff's initial motion for judgment on the pleadings, Plaintiff is free to move for summary judgment on these issues after discovery has been conducted.

clearly erroneous nor contrary to law. The Court agrees with the Magistrate Judge's findings that Defendant acted with good faith and that Plaintiff suffered no significant harm or prejudice. Thus the Court will affirm the Magistrate Judge's Order denying sanctions.

**April 3, 2009**

Date

**s/ Jerome B. Simandle**

JEROME B. SIMANDLE

United States District Judge

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**ORDER**

This matter having come before the Court upon Plaintiff's "Appeal to District Court Judge of Magistrate's Order Denying Plaintiff's Motion for Judgment on the Pleadings" [Docket Item 39] and Plaintiff's appeal of the Magistrate Judge's November 6, 2008 Order denying Plaintiff sanctions against Defendant Experian, Inc. [Docket Item 42]; the Court having considered the Plaintiff's submissions in support thereof; for the reasons explained in the Memorandum Opinion of today's date; and for good cause shown;

IT IS this 3rd day of **April, 2009** hereby

ORDERED that Plaintiff's appeal of this Court's November 5, 2008 Order denying judgment on the pleadings shall be regarded as a motion for reconsideration and it hereby is **DENIED**; and it is further

ORDERED that the Magistrate Judge's November 6, 2008 Order denying sanctions against Defendant Experian shall be, and hereby is, **AFFIRMED**.

**s/ Jerome B. Simandle**  
JEROME B. SIMANDLE  
United States District Judge